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NOTES ON CURRENT AND RECENT EVENTS.

ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.

The Differential Diagnosis of Crime.¹—This subject should be discussed from its dual relation to society and to the courts.

The mere failure of the individual to so regulate his conduct as to conform to the provisions of the law is not a crime. Indeed, the willful violation of the law is not a sufficient definition of actual crime, for a crime is often committed and yet no statutory law violated. Therefore, we must consider the matter from some other standpoint, namely: its relation to social ethics. Let us interpret crime as the willful consideration of one's own selfish desires without regard to the rights of society as expressed in ethics. The countless thousands of mentally weak of varying degrees of abnormality, who are incapable of understanding and measuring up to the dictum of society, are not criminals, but defectives—subjects for treatment or custodial care. It is from the reactions of these last named that crime must be differentiated. Its origin is found in two general causes, namely: exogenous, or environmental conditions, and endogenous, or conditions within the individual. This brings us to the consideration of the insanities. First, and especially, those presenting somatic factors of traumatic origin. We have the partial mental disturbances immediately succeeding the injuries; the various psychoses; the serious perversions of character; and epilepsy. We have in some cases the infective, or toxic disturbances more or less lasting in their effects. And, again, we have the organic insanities, often times so closely resembling the normal as to baffle the trained alienist. There are also the different degrees of mental arrest, idiocy, imbecility; and feeble-mindedness; and it is with these latter three cases that we deal most frequently. Too often do we find society and the courts interpreting each of these different degrees of mental defectiveness as crime. The imbecile or feeble-minded man or boy (in physical years of age only) fails to understand his obligation to the order of society, and because of his failure to obey such mandate, he is arrested, tried, sentenced and committed to some prison or reformatory where he is found to be just as much out of tune with the organized situation which obtains there as he was in the larger sphere. Consequently, he is again misunderstood and diagnosed as willful—exercising a free will in the line of evil—a thing impossible! In the very nature of his own non-development, he sees and understands things from an abnormal view-point, being, of course, contentious because he is honest in his belief that he is right. And now what happens to the boy? He is likely to become a hopeless pervert—at least the mental arrest becomes so firmly fixed that all possible chance for improvement is entirely destroyed, if, in fact, any such possibility ever existed. Not only this, but there was a chance for some advance along lines of habit-training, which, too, is lost because of the continual failure to classify correctly the conditions. It is needless to go on with specific cases. We have but to analyze the individual make-up of our penal or reformatory population to find an alarming percentage

¹Extracted from an address before the American Prison Association at Baltimore, Nov. 13, 1912.

CAUSAL RELATION

of imbecility, feeble-mindedness, epilepsy, insanity—all the various sub-normalities of the human mind. What good can we hope to accomplish in these cases where the mentality measures so low that the individual is unable to appreciate the simplest social obligation? And these hopeless mental dwarfs are to be found in every institution.

Why are we continuing to do these irrational and inhuman things? Because, first: society fails to interpret correctly the condition of these weaker members, such failure being expressed in the sentence of its courts committing them to some penal institution. Secondly, the institution to which they are committed fails to understand and treat them properly.

So, the question presents itself: What must be done in these cases of mental derelicts? First, their reactions should be differentiated from real crime. How? By an examination at the hands of the psychologist and alienist. When? At the time of the investigating court trial. The trial court should be furnished the necessary scientific assistance to secure an accurate and positive diagnosis and classification and on such findings the accused should be committed to such an institution as is best suited to the needs of the case. This does not mean that no person of sub-normal mentality who has transgressed the established order of society should be committed to a penal or corrective institution; but it does mean that no one should be so committed if his central nervous system is conspicuously undeveloped, or impossible of development. Indeed, a goodly percentage of our neurological defectives should be committed to our reformatories where their ailments should be scientifically diagnosed, and where intelligent mental and physical classification and treatment are given. This is a program that should commend itself to the serious consideration of every earnest thinker.

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Antolisei on the Causal Relation Between the Criminal and His Act.—

Il Progresso del Diritto Criminale has recently published serially Francesco Antolisei's *La questione del rapporto di causalità nel diritto penale*. His title is accurately descriptive of his article for he gives us the question, but not the answer. He outlines the several solutions of the problems and finds them all poor save two, Nasea's and von Buris', which he shows are clearly incomplete. He promises, however, to publish his solution in the near future. It is needed; for on the subject of the causal relation of the criminal to his act there is little clear scientific knowledge. There are two dangers to be avoided in the treatment of the subject. The first is—(but before all else—Antolisei calls our attention to the fact that he is dealing with causality within the purview of criminal law, and that it is a juridical, not philosophical problem, with which he must deal according to a practical, positive method)—that of introducing solidities and metaphysical abstractions, which will confuse simple cases, which are by far the more numerous, in lieu of giving us general rules to follow as a help in difficulties; and the second danger is that of confusing cause and intent. Without the latter there may be no criminal liability; but with a causal bond between the agent and the crime there can be no imputability. The act is not his; the subjective element in the action comes from someone else. This need of distinction is supreme. But in complicated cases, the distinction is lost to mind and A is held not to be the cause of B's death because he did not intend it. It